not remove the caveat until the expiry of the said period as thereby extended" for that would imply that only when there exists a caveat can the Registrar be said "not to remove" the same. The word "extend" is too strong for me to grapple with; and if the court were to get rid of its operation, a great public injury would be effected by calling back a right that by lapse of time had become extinct. In my view the language of the section is wholly prospective. I would therefore dismiss the application with costs.

Under Order 54 rule 22A of the Rules of the Supreme court I certify that I require no further argument on the matter.

Application dismissed.

Solicitors: *Ng Kok Thoy & Co.; Arulanandom & Co.*

DISTRICT COUNCIL CENTRAL, PROVINCE WELLESLEY v. YEGAPPAN

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Abdul Aziz J.) May 9, 1966]

[K.L. — Federal Court Civil Appeal No. 101 of 1964]

Administrative Law — Certiorari — Applicant for certiorari must have legal rights which would be infringed — Locus standi of applicant — Error on the face of the record — Discretion of court.

This was an appeal against the decision of the High Court which had issued an order of *certiorari* to quash the decision of the District Council Central, Province Wellesley in approving the site plan and building plans constituting a housing scheme ([1965] 1 M.L.J. 63). The trial judge had found that the applicant had status to seek the order of *certiorari* because as the owner and occupier of the land adjacent to the land which it was proposed to develop "he could expect that the development will be in compliance with the relevant bye-laws and the section of the Municipal Ordinance". He also found that there had been an error, on the face of the record as the District Council had exceeded its jurisdiction by approving a plan which was in breach of the bye-laws.

Held: (1) the breaches by the District Council in this case could only be discovered by a careful examination of the relevant bye-laws and even then the position was not free from doubt and therefore the error was not an error on the face of the record;

(2) that even assuming these were definite breaches, the applicant had no *locus standi* as he had not shown that any legal right or interest belonging to him would be affected by the approval of the plans;

(3) the application in his case was without merit and the conduct of the petitioner in the case was such that he did not deserve the discretionary remedy sought.

Cases referred to:—

(1) *Smith* v. *Chorley Rural Council* [1897] 1 Q.B. 678.

(2) *R.* v. *Preston Rural District Council, ex parte Longworth*, 106 L.T. 37.

(3) *R.* v. *Minister of Health* [1939] 1 K.B. 232; [1938] 4 All E.R. 32.

(4) *R.* v. *Paddington Rent Tribunal, ex parte Kendal Hotels Ltd.* [1947] 1 All E.R. 448.

(5) *R.* v. *Hendon Rural District Council, ex parte Chorley* [1933] 2 K.B. 696.

(6) *Davies* v. *Price* [1958] 1 W.L.R. 434.

(7) *R.* v. *Surrey Justices* L.R. 5 Q.B. 466.

(8) *R.* v. *Stafford Justices* [1940] 2 K.B. 43.

FEDERAL COURT.

Ng Ek Teong (*Lim Ewe Hock* with him) for the appellant.

N. Sharma (*R. K. Sharma* with him) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: I have had the benefit of reading what I would, with respect, describe as the wholly admirable judgment of Dato' Abdul Aziz with which I am in entire agreement. I would wish to add a few words only of my own but would make it clear that nothing I say is to be taken as indicating any sort of mental reservation.

I entertain very grave doubts as to whether the present respondent has any *locus standi* in the matter. Even if the action of the local authority in approving the building plans submitted by the developers was a judicial act and even if the plans which they approved related to buildings which if and when they were erected would in certain respects contravene the authority's building bye-laws, I do not see that the respondent could possibly be entitled to an order of *certiorari* unless he showed that some patrimonial interest of his own was likely to be unlawfully affected by the carrying into effect of those particular parts of the plans in respect of which they were alleged to contemplate contravention of the bye-laws.

This he conspicuously failed to do. In the circumstances he was not entitled to an order of *certiorari ex debito justitiae* and even if there was a discretion to grant such an order, in my view, it should not have been exercised in his favour.

The most he has been able to allege, again I do not think his allegations were made out, is that in one or two respects the buildings covered by the plans will contravene the bye-laws when they are erected. If this happens and if the result affects his interest to such an extent as to constitute, for example, a nuisance he will have his action and the approval of the building plans by the local authority will afford the developers no protection. So far, however, as the local authority is concerned what in effect he is trying to do is to persuade the court to set aside a decision of the authority acting honestly and in the exercise of its jurisdiction on the ground that it is mistaken and that he cannot do (see *Smith* v. *Chorley Rural Council* [1] and *R.* v. *Preston Rural District Council, ex parte Longworth* [2]).

In that connection Dato' Abdul Aziz has quoted the following passage from *Halsbury's* Laws of England (Volume II; paragraph 119) which was quoted with approval by Greer L.J., in the case of *R.* v. *Minister of Health* [3]:—

"Where the proceedings are regular upon their face and the magistrate had jurisdiction, the superior court will not grant the writ of *certiorari* on the ground that the court below has misconceived a point of law. When the court below has jurisdiction to decide a matter, it cannot merely because it incidentally misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence be deemed to exceed or abuse its jurisdiction."

In the case of *R.* v. *Paddington Rent Tribunal, ex parte Kendal Hotels Ltd.* [4] Lord Goddard referred to the same passage and added the following observations (at p. 449):—

"Those are all matters of appeal. They are not matters in respect of which *certiorari* will lie, nor are they matters which can be brought before the court on this proceeding merely because the statute gives no right of appeal."

Later he referred to certain matters which the rent tribunal had taken into consideration which were attacked before the court and said this:—

"As we have no jurisdiction to act as a court of appeal, it does not seem to me that it would be useful or desirable that I should express any opinion whether or not those were matters which ought or ought not to have been taken into account by the tribunal."

The truth of the matter would seem to be that the respondent, who should never have been consulted in the matter for there is nothing in the Municipal Ordinance requiring such consultation, is anxious to prevent the developers making use of their land in a way he does not like or if he cannot do so to obtain some sort of compensation from them. To do so he has attempted to exploit what he alleges to be minor illegalities in the plans which they have prepared. He may or may not have some remedy against the developers, I express no opinion on the point. He certainly has none against the local authority.

I would allow the appeal with costs.

Ong Hock Thye F.J.: I have had the advantage of reading in draft the judgments of Abdul Aziz J. and the Lord President and I would express my entire concurrence therewith by adding a few words of my own.

In the first place, I am clearly of the opinion that the respondent had no *locus standi* whatever to intervene by way of an application for an order of *certiorari*. The view of the learned trial judge on this point, which he disposed of as a preliminary issue, was as follows:—

"It seems to me that the applicant *is entitled* as the owner and occupier of the land adjacent to the land which it is proposed to develop to expect that the development will be in compliance with the relevant bye-laws and sections of the Municipal Ordinance. That being the case it seems to me that the applicant has got status."

In coming to that decision he had relied on *R.* v. *Hendon Rural District Council* [5] as authority for the proposition that "*certiorari* was granted at the suit of the owner of land adjacent to land which was liable to be affected by a decision of what today we would call a local planning authority", and he added:—

"It is to be noted that the applicant in that case was not merely a member of the public living in the locality, but he was the owner of land which was likely to be affected by the decision itself, and it is, perhaps, not altogether surprising that in that case there was held to be sufficient status."

In voicing my dissent, with respect, I would say that, in the *Hendon* case, a legal right to compensation arose in certain events under section 10 of the Town Planning Act, 1925, which could not be ignored. The argument of Mr. Hodson (see p. 701) which Avery J. accepted was:—

"The applicant for the writ of *certiorari* in this case is interested in the matter, not only as a ratepayer who may be liable in the future to contribute to the compensation, if any, which may become payable, but also as an adjoining owner whose property may be likely to be affected by the proposed development."

There were two limbs in that argument of which the second was by no means all sufficient.

In the instant case no recognisable legal right of the respondent had been infringed. The letter of April 25, 1964, plainly shows that what the respondent, rightly or wrongly, had in mind was a mere possibility of a nuisance arising *in futuro*. It was, of course, mere speculation and something that might never arise. In any event, if and when a nuisance ever arises, a proper remedy exists for its abatement. In any event again, *de minimis non curat lex*.

In the second place, I am of as firm opinion as Abdul Aziz J., that, for the reasons he has given, if discretion remains to be exercised, I should not exercise it in the respondent's favour.

I too would allow this appeal.

Abdul Aziz J.: On the 16th October 1964 the respondent (objector) obtained a rule absolute for an order of *certiorari* to remove to the High Court at Penang and quash the decision of the District Council Central, Province Wellesley approving the site plan and building plans constituting a housing scheme on Lot 14 and 15, Mukim 8, Province Wellesley Central. Against this rule the board now appeals to this court.

Briefly the facts of the case insofar as they are necessary to explain my judgment are as follows: The respondent was the owner of the lot adjacent to Lots 14 and 15, i.e. Lot 16 on which stood the respondent's bungalow, the west wall of which was approximately between twenty feet to ten feet from the common boundary of his lot and Lot 15. Some time in 1963 the owners of Lots 14 and 15 submitted to the District

Council for approval a comprehensive plan for the development of the two lots by the erection of shophouses, semi-detached houses and terrace houses in six blocks. There were to be two blocks of shophouses, Nos. 1, 2 and 3 in one block (West Block) and Nos. 4 and 5 in another block (East Block), both facing the main road with a 36-feet wide service road in between the two blocks. The west wall of the West Block would have no clear space with the boundary of the adjacent lot, i.e. Lot 13. The east wall of the West Block and the west wall of the East Block would also have no clear spaces with the boundary of the plots, i.e. the service road. The east wall of the East Block would be some twenty feet from the common boundary with the objector's lot No. 16. The shops would abut onto the main road — the frontage varying from nineteen feet six inches to nineteen feet ten and a half inches and the depth approximately sixty-five feet. Since the breaches of the bye-laws as found by the judge related only to the shophouses it is worthwhile to point out that the nearest point between the two blocks of shophouses and the respondent's house was approximately sixty feet. On both sides of the service road there were to be three blocks of semi-detached houses facing the service road, the rear portion of which houses would face the front and side of the respondent's house. I do not think it is necessary to go into details of the semi-detached houses and the terrace houses because whatever complaints there may be as to the infraction of the building bye-laws in regard thereto the learned judge adequately dealt with them and came to the conclusion that there were no breaches of the building bye-laws and I have no reason to differ from that conclusion. The only point worth mentioning about the semi-detached houses which were going to be the nearest buildings to the respondent's bungalow was that the rear portion of the semi-detached houses would be ten feet from the common boundary and that the developers were planning to put up a chain link fencing three feet inside their lot leaving a gap three feet in width between the fence and the objector's boundary.

The final plan as submitted by the developer was first considered by a special meeting of the housing committee of the council on the 9th December 1963 and later by the full council on the same day. As these minutes are relevant to show conduct of the respondent I would set out the two minutes in extenso.

"Minutes of the special meeting of the housing committee held on Monday 9.12.63 at 2.30 p.m. in the council meeting room, Bukit Mertajam.

Proposals for 5 two-storey shop-houses, 7 one-storey terrace houses and 6 semi-detached one-storey houses on Lots 14 and 15 Mukim 8 Sungei Rambai.

The committee was informed that the owner of the land adjacent to the land for the proposed housing project Y.B. Dr. M. P. L. Yegappan was invited to attend the meeting in order to get his opinion on this matter. Advice and comments of the State planning officer, senior health officer and senior executive engineer in respect of the plans of the sites and buildings were explained to Y.B. Dr. M. P. L. Yegappan and the committee.

After having heard the explanations Y.B. Dr. M. P. L. Yegappan made the following suggestions:—

(1) A 6 ft. high wall should be constructed to adjoin the rear wall of the semi-detached houses with the N. N. E. corner of shop-house No. 5. Another 6 ft. high wall should also be constructed in between the South East corner of shop-house No. 5 and the present fencing belong to the owner of the land adjacent to it.

(2) The drains at the rear of the semi-detached houses which begin from the back portion of the houses should be amended to begin from the sides of the proposed houses.

(3) The rear doors of the proposed semi-detached houses should be closed up and new doors should be constructed on the sides of the semi-detached houses.

(4) The area fenced up by the proposed wall and the area behind the semi-detached houses belong to Y.B. Dr. M. P. L. Yegappan should be cemented.

The following are his reasons:—

(i) To prevent the vacant space from being used

(ii) To prevent rubbish from being thrown into that area.

The committee having considered the abovementioned facts decided that it was not agreeable to the proposal put up by Y.B. Dr. M. P. L. Yegappan with the reason that the said wall would be an obstacle in case of fire and it decided to approve the plans of the sites and buildings as signed by the senior executive engineer and senior health officer in accordance to Building Bye-law 20(1)."

"Minutes of special meeting of District Council Central, Province Wellesley held on Monday, 9.12.63 at 3.03 p.m. in the council meeting room, Bukit Mertajam.

Proposal for the construction of 5 two-storey shop-houses, 7 one-storey terrace houses, and 6 semi-detached two-storey houses on Lots 14 and 15 Mukim 8 Sg. Rambai.

The chairman informed that the purpose of having this special meeting was to discuss about the plans of the abovementioned housing projects which had been the subject matter of complaint lodged by Y.B. Dr. M. Y. P. Yegappan.

The applicant has now forwarded the plans of the sites and new buildings and the said plans had already been sent as usual to the State planning officer, senior executive engineer and senior health officer. Those plans had been approved by them. The housing committee had also held a meeting with the purpose of discussing about the plans....

The building inspector was invited to give an explanation in full detail in respect of the amended plans of the said project on the proposal of Y.B. Dr. M. P. L. Yegappan.

Inche Ooh Chooi Cheng asked as to under what authority was Y.B. Dr. M. P. L. Yegappan invited to the meeting of the housing committee.

Y.B. Inche Tan Cheng Bee explained that Y.B. Dr. M. P. L. Yegappan was only invited to be present at the special meeting of the housing committee for him to give his own explanation about the situation of the plans in respect of the whole project as advised by the legal adviser.

Inche Ooh Chooi Cheng stated that because Y.B. Dr.

M. P. L. Yegappan was still requesting as what he had requested previously, and because he did not give any practical suggestion, Inche Ooh Chooi Cheng recommended that Y.B. Dr. M. P. L. Yegappan should be informed that the council was not agreeable to his explanation and that the council decided to approve the plans for the sites and buildings.

This decision should be given to him and he should be invited to forward any practical suggestion. His suggestions would be recommended to the planner at the time when the planner would begin to do the work of construction.

Y.B. Inche Tan Cheng Bee seconded the proposal of Inche Ooh Chooi Cheng and was unanimously agreed.

The chairman then proposed that the decision of the special meeting of the housing committee held on 9.12.63 and the decision of the meeting of the committee in council should be approved."

The next day, 10th December 1963, the secretary of the council wrote to the respondent informing him of the council's decision that the council had decided to approve the site and building plans of the above scheme. In the penultimate paragraph the objector was invited to offer practical suggestions which the council would recommend to the developers at the time they commenced building operations.

The reply from the respondent contained complaints about the inadequacy of the block plan and ended with a threat to the council and developers not to proceed and hasten the building operations. Some discussions must have taken place between the secretary and the solicitors for the respondent because on the 20th April 1964 the secretary wrote to the respondent's solicitors as follows:—

"I am directed to refer to the discussions held on 16th April, 1964 in the council conference room and to request you to confirm the following requests of your client and that no further objections or requests will be made further from you regarding this matter.

(1) The back doors of the semi-detached houses are to be sited at the side.

(2) The fence wall connecting the semi-detached houses should be built up to a height of the existing chain link fence of your client.

(3) The vacant piece of land within the houses and your client's fence should be kept clean by the council or the land be sold to him at a nominal price for which he will undertake to maintain the said piece of land.

2. Your early confirmation will be much appreciated."

The respondent's solicitors replied on 25th April 1964 and I quote the body of the letter as follows:—

"We thank you for your letters dated the 18th and 20th days of April, 1964 reference (30) dlm. MDT/B/1367 and (31) dlm. MDT/B/1367 respectively and our instructions on your said letters are as under.

1. The back doors of the semi-detached houses are to be sited at the side i.e. in future no such back doors are to opened at the rear of the buildings overlooking our client's house.

2. The open spaces in between the set of houses to be sealed up with a brick wall (of a height equal to the chain link fence of our client) in line with the rear wall of houses to form one continuous wall from end to end. (We trust that paragraph 2 of your letter dated 20th April, 1964 expresses the same view. If your meaning is different then our instructions aforesaid remain the same).

3. The strip of land constituting the back lane for all intents and purposes at the side of house No. 5 and at the rear of houses Nos. 1, 2, 3, 4, 5 and 6 leading to Sungei Rambai Road on the one side and the end of house No. 6 on the other side be transferred to our client at a nominal reasonable price.

Lastly there must be an effective agreement between the developer and our client (without involving the council) at the time of selling the aforesaid strip of land of a nature securing the *status quo* for the future.

Anything inconsistent with the aforesaid contained in your aforesaid letters is not admitted by our client."

At this stage it will be noted that none of the so-called suggestions had any reference to breaches of the building bye-laws which became the subject of the proceedings in the High Court at Penang. It should also be noted that the terms requested, especially the term requiring the developer to sell to the objector a strip of land belonging to the developer at a "nominal reasonable price" can hardly be said to be reasonable and no building authority can lawfully impose on a developer such terms as conditions to approval.

Having obtained no satisfaction from the council the respondent then moved the High Court for an order of *certiorari* against the council. The grounds on which the order was sought and subsequently obtained as revealed in the original affidavit of the respondent are as follows:—

"(a) That the decision of the District Council Central, Province Wellesley, approving site plan and building plans constituting housing scheme on Lot Nos: 14 and 15, Mukim 8, Province Wellesley Central was contrary to and an infringement of the provisions of:—

(i) section 46,

(ii) sub-section (2) of section 37,

(iii) section 142,

(iv) sub-section (1)(b) of section 17,

(v) sub-section (1)(e) of section 17,

(vi) section 123

of the Rural Board, Province Wellesley, Building Bye-laws, 1950 and

(i) section 144A,

(ii) section 145,

(iii) sub-sections (1) and (2) of section 107

of the Municipal Ordinance (Chapter 133).

(b) That for the above reasons the said District Council Central, Province Wellesley has acted without and/or in excess of its jurisdiction by its decision to approve the aforesaid site plan and building plans constituting house scheme.

(c) That by acting contrary to the Rural Board, Province Wellesley Building Bye-laws, 1950 and the Municipal Ordinance (Chapter 133) as aforesaid, the applicant's rights to the enjoyment of his own property

i.e. a bungalow or a compound house situated on Lot No: 16, Mukim 8, Province Wellesley Central would be adversely affected; particularly the living conditions would substantially deteriorate and the value thereof materially affected.

(d) That by conscientiously misrepresenting to the applicant facts within the knowledge of the District Council Central, Province Wellesley on the 9th day of December, 1963 at the Buildings Committee Meeting, the said misrepresentations being made by the chairman of the buildings committee and the secretary of the District Council Central, Province Wellesley, the decision of the buildings committee and also that of the full council is tainted with wrongfulness and is not a *bona fide* decision arrived at in good faith and judicially."

The learned trial judge granted a rule absolute in favour of the objector and in his lengthy judgment took great pains to consider the conditions under which an order of *certiorari* may be issued. After considering various authorities he came to the conclusion that on the facts as ascertained by him all the conditions had been satisfied and decided to exercise his discretion in favour of the objector. He came to the conclusion, *inter alia*, that there was an error on the face of the record by reason of the fact that the council had exceeded its jurisdiction by approving a plan which was in breach of the bye-laws. He also came to the conclusion that by reason of the infraction of the bye-laws (and I quote his words) :—

"....that the applicant is entitled as the owner and occupier of the land adjacent to the land which it is proposed to expect that the development will be in compliance with the relevant bye-laws and the section of the Municipal Ordinance. This being the case it seems to me that the appellant has got status."

He went on to say after reviewing the principle enunciated in Dr. de Smith's "Judicial Review of Administrative Action":—

"....that the decision to approve the plans of the development of the neighbouring property does affect the ownership and possession of the applicant's land."

The learned trial judge made two specific findings as regards the breaches of the bye-laws: that the type A building (shophouses) contravened bye-law 142 and bye-law 146 firstly because there was no clear space of 10 feet between the west block and the adjoining lot as required by bye-law 142 and secondly because the depth of the shophouses i.e. 65 feet exceeded the permissible depth of 45 feet as laid down by bye-law 46. There is no reason for me to differ from the finding of the learned trial judge on this question although I would say that the interpretation of these two bye-laws are not free from doubt. For example, bye-law 142 lays down that "for a detached or a pair of semi-detached houses there shall be at least ten feet clear between the building and the boundaries of its plot". Would this bye-law also apply to buildings other than detached or semi-detached buildings, for example, terrace houses or a row of shophouses which in ordinary parlance is neither a detached nor semi-detached house. Also in bye-law 46 it is stated that "the proportion borne by the depth to the frontage in the case of any domestic building not being a detached or semi-detached building shall not exceed the proportion of 2¼, depth, to 1, frontage; provided that in no case shall the depth exceed 45 feet and provided further that such extensions of or additions to such building may be permitted and shall not, to the satisfaction of the board, exclude light or air therefrom". It has been argued, and there is some substance in this argument, that an extension may be approved simultaneously with the building approval and that this is in fact contemplated by the bye-law. One example of this is bye-law 147 which deals with staircases and it refers to buildings of 70 feet or more in depth. The council also contended that it is the standard practice throughout Malaya to approve shophouses with more than 45 feet depth, with no clear space with the boundary of the plot.

I will now proceed to deal with the first point i.e. that there was error on the face of the record. I do not propose to dwell at length on this concept — a subject dear to academicians. Suffice for me to state that much gloss has gathered on the concept of error apparent on the face of the record and it seems hardly necessary for me to add anything more to it. Dr. de Smith summed up this concept (based on authorities) at page 63 of his book "Judicial Review of Administrative Action" thus:—

"The characteristic attribute of a judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends, or unless an error of law is apparent on the face of the record of a determination made by it (in which case the decision may be quashed by *certiorari*). These principles govern judicial review not only of the findings of inferior courts *stricto sensu*, but also of the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions may be *res judicatae*."

In the final analysis he stated, at page 88, that:—

"*Certiorari* will issue to quash the decision of a statutory tribunal if an error of law is apparent on the face of the record, but not if the error is one of fact unless the error goes to the tribunal's jurisdiction."

But he went on to say:—

"It is obviously far too early to identify firm criteria for discriminating between law and fact for this purpose, and it may well be that the criteria will vary with the nature of the subject-matter and the court's assessment of the measure of deference that ought to be accorded to a particular tribunal's expertise."

In this appeal nobody is saying that the board has no power to approve the development of the land. What they say is that the board, by approving a development plan which is in

breach of the bye-laws, has exceeded its jurisdiction and the breach occurred because the board has misconstrued the law. As I have indicated above the breaches could only be discovered by a careful examination of the relevant provisions of the bye-laws and even then the position is not free from doubt. *Halsbury's* 3rd Edition, Volume 11 at page 62 offers the following notes relevant to this point:—

"Where the proceedings are regular upon their face and the inferior tribunal had jurisdiction, the superior court will not grant the order of *certiorari* on the ground that the inferior tribunal had misconceived a point of law. When the inferior tribunal has jurisdiction to decide a matter, it cannot (merely because it incidentally miscontrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence or convicts without evidence) be deemed to exceed or abuse its jurisdiction."

The statement of law in *Halsbury's* was adopted by the Court of Appeal in *R.* v. *Minister of Health.*(3) At page 36 ([1938] 4 All E.R.) Greer L.J. stated:—

"If it be right to say that in this case all that was done by the Minister that could be made the subject of complaint and the ground for an application for *certiorari* was that he misconstrued the words contained in sect. 11 of the Act, that would not give the right to apply for *certiorari*. It would not support an order for *certiorari*."

The test that I would, therefore, apply in this particular case is: was the error self-evident from the record, that is to say, evident without any elaborate examination of the record. It must be a patent error lying on the face of the order and capable of being seen without being shown by a decision though the face need not necessarily be the surface. In *Davies* v. *Price* (6) at page 441 Parker L.J. in dealing with the question of jurisdiction by reason of misconstruing of statute, made a conclusion which I adopt:—

"The matter was properly referred to them; they clearly had jurisdiction to decide whether to give or withhold consent, and if they miscontrued the statute or acted on no evidence, they merely erred in law, and unless that error is manifest on the face of the award, the decision cannot be challenged on proceedings for an order of *certiorari*."

Assuming these were definite breaches, how did these breaches affect the objector as to give him *locus standi* in these proceedings. In what way has the right or interest of the objector, who is a stranger, been affected by the approval of the board to approve the plan for the development of the neighbouring property?

On this question the learned judge held that the applicant had status because as the owner and occupier of the land adjacent to the land which it is proposed to develop "he could expect that the development will be in compliance with the relevant bye-laws and the section of the Municipal Ordinance". In coming to this decision he relied very heavily on the case of *R.* v. *Hendon Rural District Council, ex parte Chorley.*(5) In that case *certiorari* was granted at a suit to the owner of the land adjacent to the land which was liable to be affected by a decision of the local Planning Authority and it was held, therefore, that the owner had status to apply for *certiorari*. With respect, that case must be distinguished as in that case there was distinctly a tangible legal right involved. As Avory J. said at page 704:—

"I think we ought to apply the principle which was laid down by Brett L.J. (as he then was) in *Reg.* v. *Local Government Board*, where he said that the jurisdiction of the court ought to be exercised widely when dealing with matters which are not perhaps strictly judicial, but in which the rights and obligations of persons may be affected; and the quotation from the judgment in *R.* v. *Electricity Commissioners* is, I think, sufficient to show that in this case a right of a subject was involved. In other words, I accept Mr. Hodson's argument that the effect of the resolution of December 1, 1932 was to confer upon Mr. Archer a right, in certain events, to compensation, and as the council was, therefore, dealing with a matter which affected the rights of an individual, I think the case comes within the principles laid down in *R.* v. *Electricity Commissioners*."

Dr. de Smith at page 306 states:—

"There is no single authoritative definition of a person or party aggrieved; the meaning of the expression will vary according to the context in which it is found. In general, however, it can be said that a 'person' aggrieved is not merely one who is dissatisfied with an act or decision but one who is wrongfully deprived of or refused something to which he is legally entitled or upon whom a legal burden is cast."

With deference to the learned judge I think the objector's complaints must be examined objectively. *Certiorari* is not available for vindicating mental or sentimental injury. The fact that his neighbour's backyard will face his (the objector's) front lawn or his sitting room is naturally a matter of interest or, to put it a bit higher, a matter of grave concern to him. But that does not give him a legal right to object. He will have legal right to object and, therefore, *locus standi* if the adjoining buildings are going to be put up in contravention of the law and the breach by its nature would materially affect his legal right. The existence or otherwise of this element called legal right depends upon the facts of each case and the burden is on the objector to show that his proprietory rights have been injured. Here the objector's complaints all relate to buildings of more than sixty feet away from his bungalow and the nature of the breaches, assuming that they exist, are such that looking from any facet, they could not possibly affect "the ownership or possession of his land". As far as the shophouses were concerned all he had was a remote interest which could hardly be called a right. Therefore, unless it is capable of being drawn into the sphere of legal injury no legal relief can be accorded in respect of it and the matter must remain beyond the region of the striking range of *certiorari*.

It has been said that *certiorari* is an extraordinary remedy intended to be applied in

exceptional cases in which the ordinary legal remedies are inadequate. It would issue within the court's discretion as of course to a person aggrieved but where the applicant is a stranger the court's discretion will only be exercised in exceptional circumstances. As was stated in *R.* v. *Surrey Justices* [7] (*per* Blackburn J.) :—

"I entirely concur in the proposition that, although the court will listen to a person who is a stranger, and who interferes to point out that some other court has exceeded its jurisdiction, whereby some wrong or grievance has been sustained, yet that is not *ex debito justitiae*, but a matter upon which the court may properly exercise its discretion, as distinguished from the case of a party aggrieved, who is entitled to relief *ex debito justitiae* if he suffers from the usurpation of jurisdiction by another court."

This rule again is subject to qualification, *a fortiori* a stranger, that even though the writ issues *ex debito justitiae* where the applicant is a person aggrieved the court does not lose its discretion to refuse the order where the conduct of the applicant disentitles him to such relief. Sir Wilfred Greene M.R. in *R.* v. *Stafford Justices* [8] at page 43 stated thus:—

"Now, in my opinion, the order for the issue of the writ of *certiorari* is, except in cases where it goes as of course, strictly in all cases a matter of discretion. It is perfectly true to say that if no special circumstances exist, and if all that appears is a clear excess of jurisdiction, then a person aggrieved by that is entitled *ex debito justitiae* to his order. That merely means this, in my judgment that the court in such circumstances, will exercise its discretion by granting the relief. In all discretionary remedies it is well known and settled that in certain circumstances — I will not say in all of them, but in a great many of them — the court, although nominally it has a discretion, if it is to act according to the ordinary principles upon which judicial discretion is exercised, must exercise that discretion in a particular way, and if a judge at a trial refuses to do so, then the Court of Appeal will set the matter right. But when once it is established that in deciding whether or not a particular remedy shall be granted the court is entitled to inquire into the conduct of the applicant, and the circumstances of the case, in order to ascertain whether it is proper or not proper to grant the remedy sought, the case must in my judgment be one of discretion."

The conduct of the objector is, therefore, relevant and conduct in this case is to be ascertained from surrounding circumstances. The dispute between the objector and the council has hitherto been unrelated to breaches of the bye-laws which became the ground for the petition. Significantly the letter of 25th April 1964 which contains the final demands of the objector again has nothing to do with the breaches of the bye-laws. This letter shows inconsistency and any merit in the objector's claim up to that time has been soured by parsimony and bad faith on the objector's part in trying to seek material advantage. Such tainted objectives must surely reflect on the conduct of the objector. In my view, therefore, the application lacks merit and the conduct of the petitioner is such that he does not deserve the discretionary remedy sought.

I would, therefore, allow the appeal with costs.

Appeal allowed.

Solicitors: *Lim Ewe Hock; Sharma & Co.*

OOI HEE KOI v. PUBLIC PROSECUTOR
OOI WAN YUI v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Ong Hock Thye F.J. and Ismail Khan J.) July 12, 1966]

[K.L — Federal Court Criminal Appeals Nos. X. 9 and X. 12 of 1966]

Internal Security — Consorting with armed Indonesians — Possession of firearm and ammunition — Claim to be "prisoners of war" — Geneva Conventions Act, 1962, 3rd Schedule, art. 4 — Internal Security Act, 1960, ss. 57 and 58.

National Registration — Identity card — Description of holder as "citizen of the Federation of Malaya" — Whether proof of status — National Registration Act, 1959, s. 5 — National Registration Regulations, 1960, regs. 5(2)(a) & 23(1).

Geneva Conventions Act, 1962 — Prisoners of war — Entitlement to benefit of conventions.

Judicial Precedent — Whether Federal Court bound by its own decisions — Life and liberty at stake — Relevant consideration.

OHK, the appellant in the first appeal, was convicted on charges of possession of a firearm, possession of ammunition and consorting with members of Indonesian armed forces in contravention of sections 57(1)(a), (b) and 58(1) of the Internal Security Act, 1960. He pleaded guilty to the third charge, but claimed trial on the other charges. *OWY*, the other appellant, had claimed trial on three similar charges, with the same result.

The material evidence in both cases was very much the same. They were members of an armed force of paratroopers who were air-dropped over Labis area in Johore in the early hours of September 2, 1964. On the person of *OHK* was found his identity card, No. 3019104 which indicated that his place of birth was "China" and that he was "a citizen of the Federation of Malaya". *OHK* in his statement to a police officer said, *inter alia*, that he had come over from China with his parents at the age of 2 to reside in Pontian, Johore. *OWY* was not in possession of any identity card and no evidence was given as to the kind of card issued to him under the National Registration Act, 1959. In his cautioned statement *OWY* said *inter alia* that he was born in China and that in 1948 when he was 12 his father brought him to Malaya.

It was contended for the appellants that they were and should be treated as "prisoners of war" as defined in article 4 of the Third Schedule to the Geneva Conventions Act, 1962, and as such they should be entitled to all the benefits of the relevant Conventions.

Held: (1) the question of *OHK's* allegiance could not be resolved by the mere production of his identity card (which stated that he was born in China and that he was a citizen of the Federation of Malaya) because unlike a passport an identity card does not confer rights but imposes obligations. Proof of the truth of the allegation as to this appellant's status rested on the prosecution. The prosecution offered no such proof, notwithstanding that both in the identity card and the cautioned statement, the appellant's place of birth was evident. This appellant was therefore a prisoner of